IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.23764-M of 2004
Date of Decision:- 15.02.2007

Mohan Lal Gupta ....Petitioner(s)

through
Mr.A.K.Khunger, Advocate

vs.

M/s Gopal Krishan & sons & ors. ....Respondent(s)

through
Mr.Alok Jain, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

In this petition under Section 482 Cr.P.C., the petitioner impugns the order dated 11.2.2004 (Annexure P-6) passed by the Learned Sub Divisional Judicial Magistrate, Abohar,` whereby his application for restoration of the complaint filed under Section 138 of the Negotiable Instruments Act, which was dismissed 'as withdrawn' on 16.10.2002, has been turned down on the ground that there exists no provision in law under which the said Court could recall the order dated 16.10.2002.

The facts may be briefly noticed.

The petitioner had filed two complaints under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. While complaint case No.39-2 instituted on 11.2.2002 was titled as "**Mohan Lal Gupta vs. M/s Gopal Krishan and sons"**, the complaint case No.40-2 of 2002 was titled as Mohan Lal Gupta vs. Jagdish Chander.

In Complaint No.40-2 of 2002 (**Mohan Lal Gupta vs. Jagdish Chander**), the petitioner made a statement on 23.11.2002 to the effect that he did not want to continue with the said complaint and the same be dismissed as withdrawn. Accordingly, the said complaint was dismissed as withdrawn.

However, another statement purported to have been made by the petitioner on 16.10.2002 to the effect that he did not want to proceed with the "present complaint" and may be permitted to withdraw it,

was appended with the record of the second complaint case i.e. Complaint No.39-2 titled as **Mohan Lal Gupta vs. M/s Gopal Krishan and sons**, on the basis whereof the said complaint was also dismissed as withdrawn.

The grievance of the petitioner is that the aforesaid statement dated 16.10.2002 too was made by him in the complaint titled as **"Mohan Lal Gupta vs. Jagdish Chander"** and the same was inadvertently tagged with the records of the other complaint filed by him against M/s.Gopal Krishan and sons.

The original records were summoned and the same have been perused.

The stand taken by the petitioner appears to be factually correct as the statement dated 16.10.2002 was apparently made by him in the complaint case titled as **"Mohan Lal Gupta vs. Jagdish Chander"** and not in the complaint filed against M/s Gopal Krishan and sons.

Consequently and for the reasons stated above, this petition is allowed and the order dated 16.10.2002 passed by the learned Judicial Magistrate, Ist Class, Abohar, whereby the complaint case No.39-2 titled as Mohan Lal Gupta vs. M/s. Gopal Krishan and sons was dismissed as withdrawn as well as the subsequent impugned order dated 11.2.2004 passed by the learned Sub Divisional Judicial Magistrate, Abohar are hereby set aside and the above-stated criminal complaint case No.39-2 titled as **Mohan Lal Gupta** vs. **M/s.Gopal Krishan and sons and others** is directed to be restored to its original number and file.

The petitioner is directed to appear before the learned trial Court on 5.3.2007, who shall further proceed with the matter in accordance with law.

The original records be sent.

February 15, 2007 **(SURYA KANT)**
poonam **JUDGE**